

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD ROSS HANSEN and  
DIANE RENEE ERDMANN,

Defendants.

NO. CR18-92RAJ

**GOVERNMENT MEMORANDUM  
FOR APRIL 17, 2019  
STATUS CONFERENCE**

**I. CASE OVERVIEW**

On April 12, 2018, the grand jury returned an indictment charging Defendants with 20 counts of wire fraud (in violation of 18 U.S.C. § 1343) and mail fraud (in violation of 18 U.S.C. § 1341) related to a scheme to defraud the customers of Northwest Territorial Mint (NWTM). Trial is scheduled for October 21, 2019.

**II. PENDING MOTION**

The only motion before the Court is Defendants' Motion Asserting Privilege in Part and Waiving Privilege in Part Regarding Karr Tuttle Documents (hereinafter "Privilege Motion"). Dkt. #63. The Privilege Motion is fully briefed – the government responded at Dkt. #66 and Defendants filed a reply brief at Dkt. #69.

1 The Privilege Motion pleadings describe how NWTM retained the Karr Tuttle  
 2 Campbell law firm in late 2015-early 2016, in the months before NWTM filed for  
 3 bankruptcy, and after NWTM's former counsel raised concerns about fraudulent business  
 4 practices. Dkt. #63 at 3-5; Dkt. #63-4 ("Fullington Memo"). Karr Tuttle attorney Dino  
 5 Vasquez conducted an audit of part of the NWTM business including a series of  
 6 interviews of NWTM employees. Mr. Vasquez then prepared a six-page letter describing  
 7 his work. Dkt. #63 at 4; Dkt. #63-5 ("Audit Memo").

8 Besides the communications about the audit, there were separate communications  
 9 about a criminal investigation. These communications were between Ross Hansen,  
 10 Diane Erdmann, and Karr Tuttle attorney Ron Friedman.

11 In their Privilege Motion, Defendants seek to protect both seven specific emails  
 12 (Dkt. #63 at 7) and "communications with the Karr Tuttle attorneys related to the  
 13 criminal investigation" (Dkt. #63 at 10) as privileged. The government responded and  
 14 cited the relevant Ninth Circuit precedent concerning attorney-client privilege in the  
 15 context of company counsel. *See* Dkt. #66 at 4-8. The government respectfully requests  
 16 that the Court rule as to whether Defendants have carried their burden.

17 In addition, the government also requests that the Court clarify that the  
 18 communications regarding the audit and the Audit Memo are not privileged, and  
 19 therefore Mr. Vasquez (or other Karr Tuttle witnesses) may answer the government's  
 20 questions about the audit. Defendants do not appear to be asserting privilege as to any of  
 21 the audit-related communications, but rather only the communications later in time and  
 22 related to any criminal investigation.

### 23 **III. OTHER ISSUES TO BE ADDRESSED AT STATUS CONFERENCE**

#### 24 **A. The Scheduling Order**

25 As the Court knows, two-and-a-half months ago, on January 29, 2019, the Court  
 26 entered the parties' agreed Order Setting Case Schedule. Dkt. #65. The government has  
 27 been proceeding under this case schedule. The next date on this schedule is the deadline  
 28 for filing pretrial motions, which is May 3, 2019.

1 The defense approached the government about an agreement for a preliminary  
 2 disclosure of exhibit and witness lists. The government agreed to earlier August dates.  
 3 These earlier dates were a good-faith estimate based on the current agreed scheduling  
 4 order and the time it would take to prepare useful lists.

5 Now, in their status conference filing, the defense suggests not only that the  
 6 government should be required to prepare exhibit lists in June, but also suggests that the  
 7 pretrial motions briefing and hearing should be moved to August and September  
 8 (encroaching on time that was previously reserved for motions *in limine*).

9 The government respectfully requests that the pretrial motions schedule remain as  
 10 scheduled. *See* Dkt. #65 at 2.

#### 11 **B. Request for Subpoenas**

12 The defense also requested that the government produce the subpoenas that were  
 13 issued to the Trustee during the investigation of this case. To be clear, the government  
 14 has produced subpoena returns, i.e., documents produced in response to the subpoena.  
 15 The government understands that the defense will file a motion and the government will  
 16 respond at that time.

17  
 18 Dated this 16th day of April 2019.

19 Respectfully submitted,

20 BRIAN T. MORAN  
 21 United States Attorney

22 s/ Brian Werner  
 23 BRIAN WERNER  
 24 Assistant United States Attorney  
 25 BENJAMIN T. DIGGS  
 26 Special Assistant United States Attorney  
 27 700 Stewart Street, Suite 5220  
 28 Seattle, Washington 98101  
 Telephone: (206) 553-7970  
 E-mail: [brian.werner@usdoj.gov](mailto:brian.werner@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2019, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

s/ Brian Werner  
BRIAN WERNER